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No. 91-1876

In the Supreme Court of the United States

OCTOBER TERM, 1991

SAM F. LONG AND ELMER J. CANTRELL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in reversing an order granting a motion for a judgment of acquittal following a jury verdict of guilty.

1. On June 14, 1990, petitioners were indicted by a grand jury sitting in the Western District of Missouri. Three counts of the ten-count indictment charged them with conspiracy to embezzle money from a union, in violation of 18 U.S.C. 371; embezzling money from a union, in violation of 29 U.S.C. 501(c); and unlawfully transporting stolen money, in violation of 18 U.S.C. 2314. Following a jury trial, petitioners were convicted on those three counts and acquitted on the other seven counts.

On December 5, 1990, the district court granted a post-verdict judgment of acquittal on the ground that there was insufficient evidence to convict. The district court also concluded that its failure to instruct the jury about single or multiple conspiracies warranted a new trial, but that a new trial ruling was mooted by the court's grant of the acquittal. Pet. App. 31-49.

On December 12, 1991, the court of appeals reversed. Pet. App. 1-30. The court held that the evidence was sufficient to convict petitioners on all three counts. The court also ruled that the district court erred in concluding that the failure to instruct on the issue of single versus multiple conspiracies merited a new trial.

2. Petitioners contend (Pet. 14-29) that the evidence was insufficient to establish the offense of union embezzlement, in violation of 29 U.S.C. 501(c), because the evidence failed to show that Long had fraudulent intent or that he lacked proper union authorization, and because the evidence failed to show that Cantrell was guilty of aiding and abetting Long. Petitioners also contend (Pet. 9-14) that lack of authorization for use of the money under the union's constitution and by-laws is an essential element to prove a violation of 29 U.S.C. 501(c), especially where, as here, it is alleged in the indictment.

Whatever the merits of petitioners' contentions, they are not ripe for review by this Court. The court of appeals' decision places petitioners in the same position they would have occupied if the district court had denied their post-trial motions for a judgment of acquittal and for a new trial. If the district court sentences petitioners but the court of appeals reverses petitioners' convictions on appeal from the final judgment against them, petitioners' present

claims might be mooted. If, on the other hand, the court of appeals affirms their convictions, petitioners will then be able to present their current contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of the final judgment. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

JUNE 1992

* Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.